

REMARKS

Preliminary Remarks

Claims 1—3 were originally filed.

Claims 1—3 are currently amended.

5 Accordingly, claims 1—3 are pending.

The Applicant respectfully requests reconsideration of the subject application based on the following remarks.

Drawings

10 The drawings were objected to because reference numbers 112, 24, 40 and 42 were not shown on Fig. 5.

A set of replacement drawings are provided herein. The changes, found in the replacement drawings, include:

Fig. 2:

15 1. Reference designators 40, 42 now point to the dotted outline of the left and right inside fasteners. The left and right inside fasteners are shown in dotted outline because Fig. 2 is a view of the outside surface, and fasteners 40, 42 are attached to the inside surface.

Fig. 4C:

20 2. A reference designator 80 indicates the fastening extension 80.

Fig. 5:

25 3. Reference designators to the left and right outside fastening patches 110, 112 have been reversed. The left fastener 110 should be on the right side of the garment, since left and right are taken from the perspective of the wearer of the garment.

Note that the Applicant has adjusted the Specification, as seen below, to address the issue of the reference numbers not seen in Fig. 5. In particular, the reader is referred elsewhere for some of these reference designators.

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Specification

The Applicant provides a substitute specification. The substitute specification includes no new matter. However, the substitute specification clears up a number of errors, such as: errors in numbering; errors resulting from confusion as to the perspective from which left and right was taken; errors referring the reader to inappropriate figures for explanation; and others.

In particular, the Applicant believes that the substitute specification clears up the objections indicated by the Examiner in the Office Action mailed 06/14/2004.

The Examiner objected to what is now paragraph 0025, in that it indicates that the optional auxiliary fastener 100 includes a first hook and first smooth surface. The Examiner counted the two hook surfaces (92 and 88) and two smooth surfaces (90 and 94) on the fastener, and indicated that the fastener 100 had a third hook surface 102 and a third smooth surface 104. However, these are the “first” surfaces of the add-on auxiliary fastener 100, which adds on to the existing fastener 80, first introduced in Figs 4A—4C. The Applicant will change this to “third”, if the Examiner would like. However, the Applicant views the auxiliary fastener 100 to be an add-on to

the fastener 80. The Examiner is invited to comment on this, which could be changed.

Claim Objections

5 Claim 2 was objected to because it lacked the word “garment”. This has been corrected.

Claims 1—3 have been amended to recite a garment in combination with “attachable” fasteners. For example, claim 1, paragraphs A—C, recites a garment, which is then attachable to the fastener recited by paragraph D.

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35 U.S.C. §112

Claims 1—3 were rejected due to lack of clarity provided by the term “carried by”. The terms “attached” and “carried by” have been used somewhat interchangeably by the Applicant. For example, in the Summary of the original
15 specification, (B) discloses fasteners that are “attached to” surfaces, while section (C) of the Summary says “carried by”.

The substitute specification unifies the terminology by using only “attached”. By using consistent terminology throughout the specification, the Applicant narrows, but clarifies, the disclosure.

20 Claims 1—3 were objected to because of the word “carried by” (used in claim 1, paragraph C, for example) was determined to be indefinite, and inconsistent with the use of the word “attached” (used in claim 1, paragraph B, for example). Accordingly, the Applicant has amended the claims to recite “attached” in a consistent manner.

35 U.S.C. §102

Claim 1 was rejected under 35 USC §102 as being unpatentable in view of US patent 5,926,926, herein after Kato. The Applicant respectfully traverses the rejection.

According to the MPEP §2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim.

Anticipation is a legal term of art. The applicant notes that in order to provide a valid finding of anticipation, several conditions must be met: (i) the reference must include every element of the claim within the four corners of the reference (see MPEP §2121); (ii) the elements must be set forth as they are recited in the claim (see MPEP §2131); (iii) the teachings of the reference cannot be modified (see MPEP §706.02, stating that "No question of obviousness is present" in conjunction with anticipation); and (iv) the reference must enable the invention as recited in the claim (see MPEP §2121.01). Additionally, (v) these conditions must be simultaneously satisfied.

The §102 rejection of claim 1 is believed to be in error. Specifically, the PTO and Federal Circuit provide that §102 anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference. *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990). The corollary of this rule is that the absence from a cited §102 reference of any claimed element negates the anticipation. *Kloster*

Speedsteel AB, et al. v. Crucible, Inc., et al., 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986).

Applicant notes the requirements of MPEP §2131, which states that “to anticipate a claim, the reference must teach every element of the claim.”

5 This MPEP section further states that “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.’ *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ‘The identical invention must be shown in as complete
10 detail as is contained in the ... claim.’ *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).”

15 **Claim1** was rejected under §102 as being anticipated by Kato.

Claim 1 has been amended to recite, in part:

“(D) left and right fastener extensions, each fastener extension having a first end attachable to left or right ends of the front loop fastener strip, respectively, and a second end attachable to the left or right
20 loop fasteners, respectively.”

The Kato reference fails to disclose a fastening extension having a first end which is attachable to the left (or right) end of the front loop fastener strip (12, in Kato) and having a second end which is attachable to the left (or right) loop

fasteners attached to the upper left (or right) corner of the inside surface of the diaper.

In particular, Kato discloses two important differences between the recited elements of claim 1:

5 First, Kato discloses no strap that attaches to Kato's inside rear Velcro 40 at one end and attaches to Kato's front Velcro 12 at the other end. This feature is expressly recited by claim 1. Thus, Kato does not use Velcro 40 to attach one end of a fastener whose other end is attached to the front Velcro 12. Instead, Kato uses the Velcro 40 to snap closed hook Velcro 26 when 26 is not in use attached to
10 Velcro 12.

Second, while Kato does disclose a fastening strap, the fastening strap goes from the *outside* (not inside) of the back surface to the Velcro on the front side.

And third, the fastening strap disclosed by Kato does not attach to the rear surface by Velcro, as recited in claim 1, which recites that the left and right loop
15 fasteners are attached to upper left and right corners of an inside surface.

Thus, Kato fails to show each and every element recited by claim 1. Accordingly, the Applicant respectfully requests that the section 102 rejection be removed.

20 **Conclusion**

The Applicant submits that all of the claims are in condition for allowance and respectfully requests that a Notice of Allowability be issued. If the Office's next anticipated action is not the issuance of a Notice of Allowability, the
25 Applicant respectfully requests that the undersigned attorney be contacted for the purpose of scheduling an interview.

In particular, if the Examiner feels that there are issues, such as: concern about the replacement drawings or replacement specification; the need for further claim, drawing or specification amendments; or other concerns, please call me, Dave Thompson, 509-499-0416 to resolve the issues.

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Respectfully Submitted,

Dated: 9-11-04

By: 

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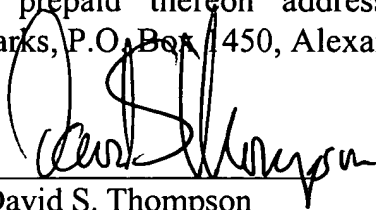
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I hereby certify that this paper and the documents referred to as enclosed therein are being deposited with the United States Postal Service on this 11th day of Sept., 2004 in an envelope as First Class Mail with first class postage prepaid thereon addressed to the Commissioner of Patents and Trademarks, P.O. Box 1450, Alexandria, Virginia 22313-1450

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